BEFORE THE CALIFORNIA BOARD OF ACCOUNTANCY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. AC-2008-7

DUANE F. FERGUSON
P. O. Box 2169
Upland, CA 91785
Certified Public Accountant License
No. CPA 34598

OAH No. [Unassigned]

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order are hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on October 26, 2008

It is so ORDERED. September 26, 2008

FOR THE CALIFORNIA BOARD OF ACCOUNTANCY DEPARTMENT OF CONSUMER AFFAIRS

1 2	EDMUND G. BROWN JR., Attorney General of the State of California GREGORY J. SALUTE		
3	Supervising Deputy Attorney General BRIAN G. WALSH, State Bar No. 207621		
4	Deputy Attorney General 300 So. Spring Street, Suite 1702		
5	Los Angeles, CA 90013 Telephone: (213) 897-2535		
6	Facsimile: (213) 897-2804		
7	Attorneys for Complainant		
8	BEFORE THE		
9	CALIFORNIA BOARD OF ACCOUNTANCY DEPARTMENT OF CONSUMER AFFAIRS		
10	STATE OF CALIFORNIA		
11	In the Matter of the Accusation Against: Case No. AC-2008-7		
12	DUANE F. FERGUSON OAH No. [Unassigned]		
13	P. O. Box 2169 Upland, CA 91785 STIPULATED SETTLEMENT AND		
14	Certified Public Accountant License No. CPA 34598 DISCIPLINARY ORDER		
15	Respondent.		
16			
17	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the		
18	above-entitled proceedings that the following matters are true:		
19	PARTIES		
20	1. Carol Sigmann (Complainant) is the Executive Officer of the California		
21	Board of Accountancy. She brought this action solely in her official capacity and is represented		
22	in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by		
23	Brian G. Walsh, Deputy Attorney General.		
24	2. Respondent Duane F. Ferguson (Respondent) is representing himself in		
25	this proceeding and has chosen not to exercise his right to be represented by counsel.		
26	3. On or about May 7, 1982, the California Board of Accountancy (Board)		
27	issued Certified Public Accountant License No. CPA 34598 to Respondent. The license was in		
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full force and effect at all times relevant to the charges in Accusation No. AC-2008-7, and will expire on January 31, 2009, unless renewed.

JURISDICTION

4. Accusation No. AC-2008-7 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 27, 2008. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. AC-2008-7 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read and understands the charges and allegations in Accusation No. AC-2008-7. Respondent has also carefully read and understands the effects of this Stipulated Settlement and Disciplinary Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

- 8. Respondent admits the truth of each and every charge and allegation in Accusation No. AC-2008-7.
- 9. Respondent agrees that his Certified Public Accountant License is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

10. Respondent has never been the subject of any prior disciplinary action. He is admitting responsibility at an early stage in the proceedings, and has been cooperative in the settlement process. Most significantly, he self-reported the fact that he had been suspended from practice before the Internal Revenue Service.

CONTINGENCY

- understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect. Except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certified Public Accountant License

No. CPA 34598, issued to Respondent, is revoked. However, the revocation is stayed and

Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

- 2. Submit Written Reports. Respondent shall submit, within ten (10) days of completion of the quarter, written reports to the Board on a form obtained from the Board. The Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to Respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.
- 3. **Personal Appearances.** Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner.
- 4. **Comply With Probation.** Respondent shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the Board in its monitoring and investigation of the Respondent's compliance with probation terms and conditions.
- 5. **Practice Investigation.** Respondent shall be subject to, and shall permit, practice investigation of the Respondent's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner.
- 6. **Comply With Citations.** Respondent shall comply with all final orders resulting from citations issued by the Board.
- Respondent should leave California to reside or practice outside this state, Respondent must notify the Board in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the Board.

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- 8. Cost Reimbursement. Respondent shall reimburse the Board \$3,000.00 for its investigation and prosecution costs. The costs shall be paid in quarterly payments in equal installment amounts. The quarterly payments shall be due on the same date as the quarterly reports. The final payment must be made by six (6) months before the date on which probation is scheduled to end.
- 9. Violation of Probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.
- 10. Completion of Probation. Upon successful completion of probation, Respondent's license will be fully restored.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order.

I understand the stipulation and the effect it will have on my Certified Public Accountant

License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: JULY 10, 2008

DUANE F. FERGUSON

Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order are hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs. June 30, 2008 EDMUND G. BROWN JR., Attorney General of the State of California GREGORY J. SALUTE Supervising Deputy Attorney General Deputy Attorney General Attorneys for Complainant DOJ Matter ID: LA2007601734 60311857.wpd

Exhibit A
Accusation No. AC-2008-7

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1	EDMUND G. BROWN JR., Attorney General		
2	of the State of California GLORIA A. BARRIOS		
3	Supervising Deputy Attorney General KEVIN W. BUSH, State Bar No. 210322		
4	Deputy Attorney General California Department of Justice		
5	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013		
6	Telephone: (213) 897-2544 Facsimile: (213) 897-2804		
7	Attorneys for Complainant		
	Attorneys for Complaniant		
8			
9	CALIFORNIA BOARD OF ACCOUNTANCY		
10			
11			
12	In the Matter of the Accusation Against:	Case No. AC-2008-7	
13	DUANE F. FERGUSON		
14	P.O. Box 2169 Upland, CA 91785	ACCUSATION	
15	Certified Public Accountant License No. CPA		
16	34598		
17	Respondent.		
18			
19	Complainant alleges:		
20	PARTIE	Q	
		-	
21	1. Carol Sigmann (Complainant) brings this Accusation solely in her official		
22	capacity as the Executive Officer of the California Board of Accountancy (Board), Department of		
23	Consumer Affairs.		
24	2. On or about May 7, 1982, the	Board issued Certified Public Accountant	
25	License No. CPA 34598 to Duane F. Ferguson (Resp	condent). The license was in full force and	
26	effect at all times relevant to the charges brought herein against Respondent and will expire on		
27	January 31, 2009, unless renewed.		
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JURISDICTION

- 3. This Accusation is brought before the Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
 - 4. Section 5100 states:

"After notice and hearing the board may revoke, suspend or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct which includes, but is not limited to, one or any combination of the following causes:

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- "(h) Suspension or revocation of the right to practice before any governmental body or agency."
- 5. Section 5107 provides, in pertinent part, that the Board's Executive Officer may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the Board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorney's fees. The board shall not recover costs incurred at the administrative hearing.

FIRST CAUSE FOR DISCIPLINE

(Suspension from Right to Practice Before a Governmental Body or Agency)

- 6. Respondent is subject to disciplinary action on the grounds of unprofessional conduct as defined in section 5100, subdivision (h), by reason of the following:
- a. On or about April 23, 2007, the Respondent sent an offer of consent to suspension from practice before the Internal Revenue Service ("IRS") for an indefinite period of time with the right to petition for reinstatement after 18 months. The offer was accepted by the IRS, and the period of suspension was effective on May 1, 2007. The facts and circumstances are as follows:

1	b. Respondent failed to timely file his Federal individual income tax returns		
2	(Form 1040) for the tax years 2001, 2002, 2003 and 2004. Moreover, Respondent was		
3	delinquent in satisfying a Federal tax obligation in an amount exceeding \$8,600.00		
4	c. Respondent failed to timely file his Employer's Quarterly Federal tax		
5	returns (Form 941) for his firm, Duane F. Ferguson, CPA, for the period ending September 2005.		
6	Moreover, there is a pattern of untimely payments resulting in tax penalties for failure to deposit		
7	and pay taxes for the quarters ending December 2001, March 2002, June 2002, September 2002,		
8	December 2002, June 2003, September 2003, December 2003, March 2004, June 2004,		
9	September 2004, March 2005 and June 2005.		
10	<u>PRAYER</u>		
11	WHEREFORE, Complainant requests that a hearing be held on the matters herein		
12	alleged, and that following the hearing, the California Board of Accountancy issue a decision:		
13	1. Revoking, suspending, or otherwise imposing discipline upon Certified		
14	Public Accountant License No. CPA 34598, issued to Duane F. Ferguson;		
15	2. Ordering Duane F. Ferguson to pay the California Board of Accountancy		
16	the reasonable costs of the investigation and enforcement of this case, pursuant to Business and		
17	Professions Code section 5107; and		
18	3. Taking such other and further action as deemed necessary and proper.		
19	DATED: March 11, 2008		
20			
21	(A) Hal Someon		
22	CAROL SIGMANN Executive Officer		
23	California Board of Accountancy Department of Consumer Affairs		
24	State of California Complainant		
25	Complanian		
26	LA2007601734		
27	Ferguson Accusation.wpd		